

96-239136  
96 239136

RECORDING REQUESTED BY:  
Department of Toxic Substances Control  
State of California

DEC 26 1996

WHEN RECORDED MAIL TO:  
Barbara J. Cook, Chief  
Site Mitigation Branch  
Department of Toxic Substances Control  
Region 2  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

RECORDED AT REQUEST OF

Owners

DEC 26 1996

AT 12 O'CLOCK M.  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER  
FEE:

450.00 pd 2pc  
1st  
19

COVENANT TO RESTRICT USE OF PROPERTY  
FASS METAL COMPANY SITE

This Covenant and Agreement ("Covenant") is made on the 27 day of November, 19 96 by Jack Fass and Diane M. Fass, husband and wife ("Covenantor") who are the owners of record of certain property situated in the City of Richmond, County of Contra Costa, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property") and by the California Department of Toxic Substances Control ("Department"), with reference to the following facts:

A. The Property is a two acre parcel, located at 818 West Gertrude Avenue, Richmond.

B. Description of Facts.

B.1. Contamination of the Property. Hazardous substances are present in soils at the Property, including, but not limited to, polychlorinated biphenyls (PCBs), chlorobenzene and heavy metals.

The hazardous substances found on the Property are to be contained and monitored by the placement of: 1) a perimeter slurry wall, 2) a cap consisting of a plastic liner, a controlled density fill topped with an asphalt concrete paving, 3) an extraction trench along the length of the area enclosed by the slurry wall from which groundwater is to be removed via a sewer line for disposal into the local sewer, and 4) a groundwater monitoring system. The purpose of the containment and monitoring system and other mitigation measures taken is to minimize exposure pathways to humans and the environment.

B.2. Exposure Pathways. If the contaminated soils should become uncovered, exposure can take place via direct contact, surface water runoff, wind dispersal, or migration to the groundwater resulting in potential dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been minimized by placing the contaminated soil under a composite cap.

- C. The Department has determined that use restrictions need to be imposed on the Property to ensure full protection of public health and the environment.
- D. The Property is presently owned by the Covenantor. The Property has been used as an industrial site (salvage yard).

ARTICLE I  
GENERAL PROVISIONS

1.1 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

1.2. Assignments. The "Department" has the right to assign any or all portions of the rights herein granted consisting of, but not limited to, the right to access the "Property" to inspect, monitor, construct, reconstruct or modify any portions of the slurry wall, cap, extraction trench, sewer line or groundwater system.

1.3 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, lease or possession of such property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.4 Incorporation Into Deeds and Leases. Covenantor agrees that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

## ARTICLE II DEFINITIONS

2.1 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The cap has been designed to sustain an AASHTO truck wheel loading of HS15-44 and constructed as outlined in Exhibits "B" and "C" attached hereto.

2.2 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.3 Improvements. "Improvements" shall mean all buildings, structures, fixtures, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.4 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.5 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns who hold title to all or any portion of the Property.

2.6 Property. The "Property" is located at 818 West Gertrude Avenue, Richmond, California, and is described in Exhibit A.

## ARTICLE III RESTRICTIONS DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

Owner agrees to restrict the use of the Property as follows:

3.1 No Disruption of Containment or Monitoring. The Property shall not be used in such a way that will disturb or interfere with the integrity of the hazardous substance containment or monitoring system described in Section B.1.

3.2 Protection of Cap. The Property shall be used and developed in such a way as to preserve the integrity of the Cap installed on the Property. The capped soil shall not be disturbed without a Soil Management Plan and a Health and Safety Plan submitted to the Department for review and approval.

3.3 No Day Care, School, or Hospital Facilities. No day care facilities for children or senior citizens, schools for persons under 18 years of age, or hospitals shall be constructed on any portion of the property.

3.4 No Residential Development. Residential development for human habitation shall not be permitted on the property.

3.5 Access. The Department or its designated representatives shall have access to the Property for the purposes of inspection, surveillance, monitoring or other actions necessary to protect public health, safety or the environment.

3.6 Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not have the authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided in this Covenant.

3.7 Enforcement. Failure of the Owner to comply with any of the restrictions or requirements as set forth in this Covenant shall be grounds for the Department to require that the Covenantor or Owner modify or remove any Improvement constructed in violation of the Covenant. Any violation of the Covenant shall be grounds for the Department to take enforcement action, including the filing of an administrative, civil or criminal action, as provided by law, against the Owner.

3.8 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, and rental agreements, and other conveyance documents relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land, the property, and the owner, lessee, or other occupant of the land or property subject to the

requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

#### ARTICLE IV VARIANCE AND REMOVAL OF RESTRICTIONS

- 4.1 Variance. Any owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from any of the Restrictions or requirements of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code or any applicable provision then in effect.
- 4.2 Removal of Restrictions. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof, may apply to the Department to remove any of the Restrictions or requirements of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code or any applicable provision then in effect.
- 4.3 Terms. Unless modified or removed in accordance with Section 4.1 or 4.2 above, the Restrictions and requirements of this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

- 5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.
- 5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication under 3.2, 3.6, 3.8, 4.1 or 4.2 of this Covenant, such notice, demand, or other communication shall be in writing and shall be sent simultaneously to an authorized representative of the Covenantor (or Owner) and to the Department, by certified mail,

with return receipt requested.

- 5.3 Partial Invalidity. If any portion of this Covenant is determined to be invalid or unenforceable for any reason, the remaining portion of this Covenant shall remain in full force and effect.
- 5.4 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, California Department of Toxic Substances Control and shall be recorded by the Covenantor in the County of Contra Costa within ten (10) days of the date of execution.

IN WITNESS THEREOF, the Covenantor and the Department execute this Covenant as of the date set forth above.

COVENANTOR:

By: Jack Far Phane Far  
 Title: Owner  
 Date: 11-6-96

DEPARTMENT OF TOXIC SUBSTANCES CONTROL:

By: Barbara J. Cook  
 BARBARA J. COOK, Chief  
 Northern California  
 Coastal Cleanup Operations Branch  
 Date: 11/27/96

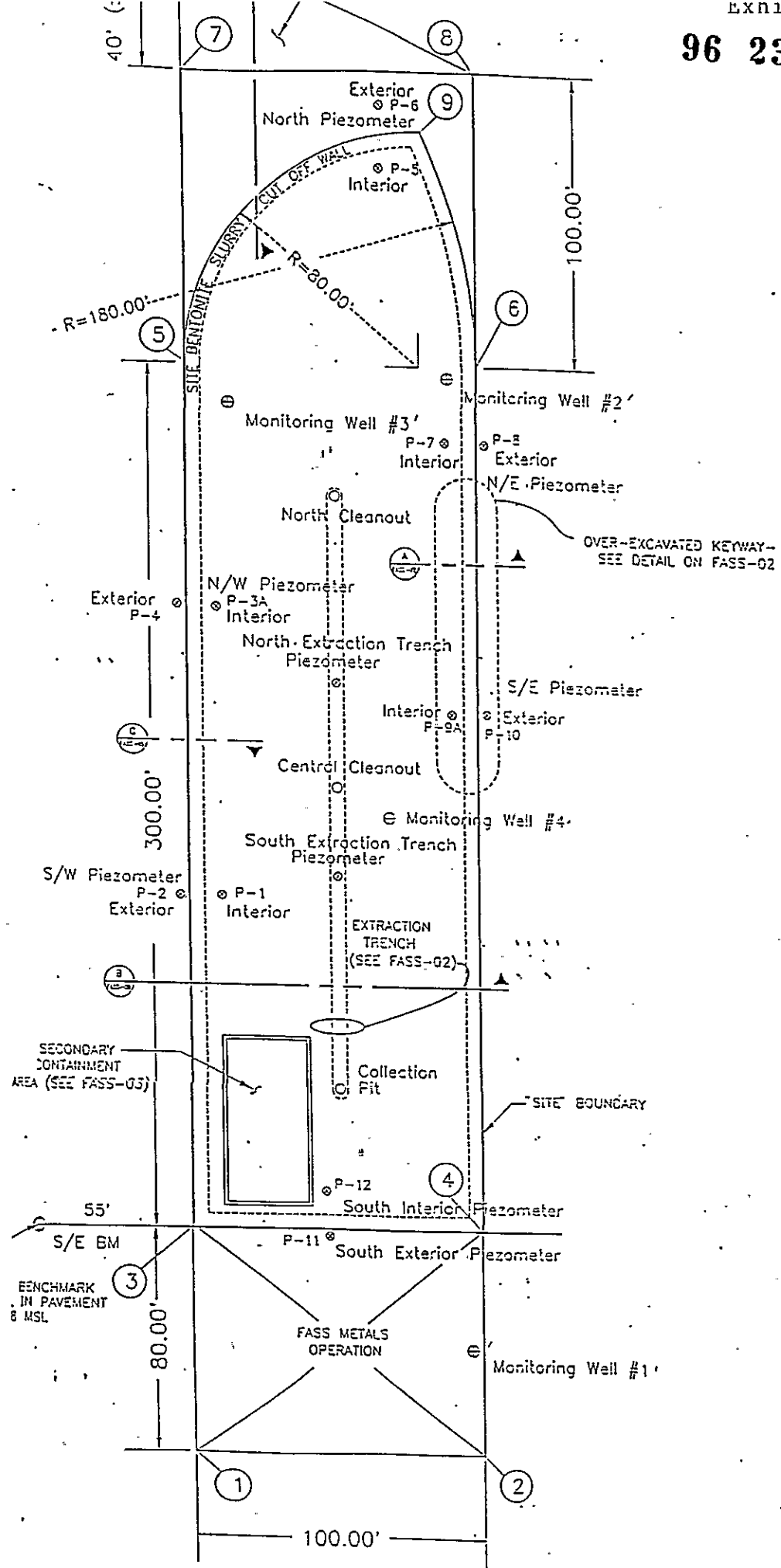
## EXHIBIT "A"

LEGAL DESCRIPTION OF THE FASS METAL COMPANY SITE  
818 W. GERTRUDE AVENUE, RICHMOND, CA

Portion of Lot 30 in Section 2, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as designated on the map entitled "Map No. 1 of Salt Marsh and Tide Lands, situate in the County of Contra Costa, State of California; 1872", the original of which map is on file in the office of the Surveyor General at Sacramento, described as follows;

Beginning at a point on the north line of the parcel of land described in the deed from Antonio Bruzzone, et ux, to Olive Gnecco, dated March 22, 1927 and recorded June 30, 1928 in Volume 140 of Official Records, at page 197, distant thereon north  $86^{\circ}25'$  east 306.61 feet from the northwest corner thereof; thence from said point of beginning north  $86^{\circ}25'$  east the north line of said Bruzzone parcel, 100.71 feet; thence south 869.91 feet to the south line of the parcel of land described in the deed from Antonio Bruzzone, et ux, to Olive Gnecco, dated March 22, 1927 and recorded June 30, 1928 in Volume 140 of Official Records, at page 195, said point also being on the north line of a 40 foot road; thence west along said line 100.51 feet; thence north 863.58 feet to the point of beginning.





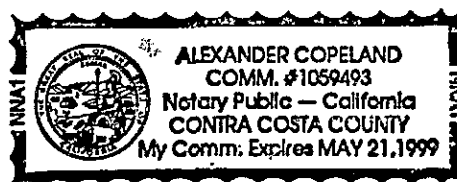


STATE OF CALIFORNIA

COUNTY OF Contra Costa

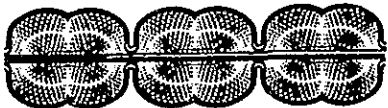
On 11-6-96, 1995 before me, a Notary Public in and for State of California, personally appeared Jack Fass, personally Known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his /~~her~~ authorized capacity, and that by his /~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

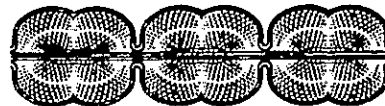
  
Notary's Signature

CALIFORNIA

96 239136



ALL-PURPOSE



## ACKNOWLEDGEMENT

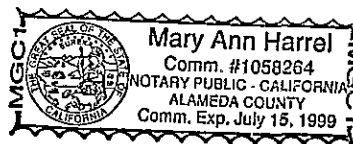
STATE OF CALIFORNIA )

COUNTY OF Alameda )

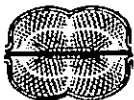
On 11-27-96 before me, Mary Ann Harrel, Notary Public  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, BARBARA J. COOK  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

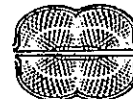
WITNESS my hand and official seal.



Mary Ann Harrel (SEAL)  
NOTARY PUBLIC SIGNATURE



## OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT Covenant to Restrict Use of Property

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

96 239136

On 24 Dec 96 before me, Alexander Copeland

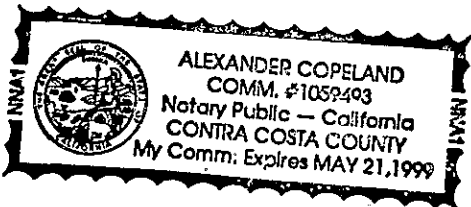
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Diane M. Fass

Name(s) of Signer(s)

☐ personally known to me – OR – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alexander Copeland  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

Document Date: 27 Nov 96 Number of Pages: 9

Signer(s) Other Than Named Above: husband, Barbara Cook

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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Signer Is Representing: \_\_\_\_\_